

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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HERMINIO PIZARRO and OLGA IRIS GARCIA,

VERIFIED
COMPLAINT

Plaintiffs,

-against-

INDEX NO:

THE CITY OF NEW YORK, POLICE
DEPARTMENT OF THE CITY OF NEW YORK, P.O.
JOSE M. REYNA, SHIELD NO: 12126, P.O.
EFRAIN MORALES, SHIELD NO: 13473 and
P.O. "JOHN DOE", name fictitious and
intended to be a Police Officer whose
name is presently unknown,

Defendants.

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Plaintiffs, by and through their attorney, GETZ & BRAVERMAN,
P.C., complaining of the defendants allege upon information and
belief as follows:

THE PARTIES

1. Upon information and belief, that at all times
hereinafter mentioned, THE CITY OF NEW YORK, (hereinafter referred
to as "CITY"), was and still is a municipal corporation duly
organized and existing under and by virtue of the laws of the State
of New York.

2. Upon information and belief, that at all times
hereinafter mentioned, the defendant, CITY, its agents, servants,
employees and/or licensees operated, maintained and controlled the
POLICE DEPARTMENT OF THE CITY OF NEW YORK, including all the police
officers thereof.

3. Upon information and belief, and at all times hereinafter
mentioned, THE POLICE DEPARTMENT OF THE CITY OF NEW YORK, its
agents servants and employees supervised, maintained and controlled

its personnel.

4. That a Notice of Claim was filed within 90 days of the occurrence alleged herein.

5. That more than 30 days have elapsed since the Notice of Claim and Intention To Sue has been served upon the defendants and the said defendants have neglected or refused to make any adjustment or payment thereof.

6. That a 50-H hearing has been requested and conducted in this matter.

7. That this action is commenced within one year and 90 days after the cause of action arose.

AS AND FOR A FIRST COUNT:

FALSE ARREST AND IMPRISONMENT

8. Plaintiff, **HERMINIO PIZARRO**, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "7" with the same force and effect as if more fully set forth herein.

9. Plaintiff, **OLGA IRIS GARCIA**, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "7" with the same force and effect as if more fully set forth herein.

10. That on or about the 4th day of August, 2007, the plaintiff, **HERMINIO PIZARRO**, was wrongfully and falsely arrested, detained and imprisoned, without any right or grounds therefore.

10. That on or about the 4th day of August, 2007, the defendants acting within the scope and authority of their employment and office, wrongfully and falsely accused the

plaintiff, **HERMINIO PIZARRO**, of the crime of Attempted Gang Assault in the First Degree; Robberty in the Second Degree; Attempted Gang Assault in the Second Degree; Attempted Assault on a Peace Officer/Police Officer/Firearm or Emer. Personnel; Robbery in the Third Degree; Assault in the Second Degree; Assault in the Second Degree; Attempted Assault in the Second Degree; Assault in the Third Degree; Petit Larceny; Resisting Arrest; Obstructing Governmental Administration in the Second Degree; Unlawful Possession of Marijuana and Harassment in the Second Degree.

11. That the said arrest and imprisonment of plaintiff, **HERMINIO PIZARRO**, was caused by the said defendants, their agents, servants and employees, without legal process, without authority of the law and without any reasonable cause, or belief, that the plaintiff, **HERMINIO PIZARRO**, was in fact guilty of such crimes.

12. That the said arrest of the plaintiff, **HERMINIO PIZARRO**, herein was caused, allowed and permitted by the defendants herein, their agents, servants and/or employees, wrongfully, unlawfully, against the plaintiff's wishes, without probable or reasonable cause, and on the charges, then made.

13. That the defendants, their agents, servants and/or employees falsely arrested the plaintiff, **HERMINIO PIZARRO**, compelled him to go with New York City Police Officers pursuant to the instruction and will of the above named defendants, detained and imprisoned plaintiff in a New York State correctional facility, and continued to detain and imprison the plaintiff, and at other diverse places and times, including, but not limited to, 40th

Police Precinct, in the County of Bronx, City and State of New York and Central Booking located in the County of Bronx, City and State of New York.

14. That the said defendants, their agents, servants and/or employees, acting within the scope of their authority and within the scope of their employment, caused the plaintiff, **HERMINIO PIZARRO**, herein to be arrested, detained and imprisoned, even though the defendants, their agents, servants and/or employees, had the opportunity to know, or should have known, that the matters hereinbefore alleged, wrongfully, unlawfully and without a sufficient charge having been made against the plaintiff, directed that the plaintiff be, arrested, searched, detained and placed in confinement at said locations.

15. That as a result of the aforesaid accusations made by the said defendants, their agents, servants and employees, acting under the scope of their office and within the scope of their authority, made falsely, publicly, wickedly and maliciously, plaintiff, **HERMINIO PIZARRO**, was held in custody by members of the New York City Police Department until the accusations were "non processed" by the Criminal Court system of the State of New York, County of Bronx.

16. That the defendants, their agents, servants and/or employees, as set forth on the aforementioned date, time and place, intended to cause the arrest, detention and imprisonment of the plaintiff herein; plaintiff was conscious of the said arrest, detention and imprisonment; plaintiff did not consent to said

arrest, detention and imprisonment; and that the said arrest, detention and imprisonment was not otherwise privileged.

17. That the aforesaid occurrence, false arrest and imprisonment of the plaintiff, **HERMINIO PIZARRO**, was caused wholly and solely by reason of the negligence of the defendants, their agents, servants and/or employees without any negligence on the part of the plaintiff herein.

18. That by reason of the aforesaid, the plaintiff, **HERMINIO PIZARRO**, was injured in mind and body, still suffers, and will continue to suffer, great physical and mental pain and anguish; has been subjected to great indignities, humiliation and ridicule; was greatly injured in his credit and circumstances; was prevented from performing and transacting his necessary affairs and business; and was incapacitated from his usual occupation.

19. That by reason of the aforesaid, the plaintiff, **HERMINIO PIZARRO**, has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

20. That on or about the 4th day of August, 2007, the plaintiff, **OLGA IRIS GARCIA**, was wrongfully and falsely arrested, detained and imprisoned, without any right or grounds therefore.

21. That on or about the 4th day of August, 2007, the defendants acting within the scope and authority of their employment and office, wrongfully and falsely accused the plaintiff, **OLGA IRIS GARCIA**, of the crime of

22. That the said arrest and imprisonment of plaintiff, **OLGA IRIS GARCIA**, was caused by the said defendants, their agents, servants and employees, without legal process, without authority of the law and without any reasonable cause, or belief, that the plaintiff, **OLGA IRIS GARCIA**, was in fact guilty of such crimes.

23. That the said arrest of the plaintiff, **OLGA IRIS GARCIA**, herein was caused, allowed and permitted by the defendants herein, their agents, servants and/or employees, wrongfully, unlawfully, against the plaintiff's wishes, without probable or reasonable cause, and on the charges, then made.

24. That the defendants, their agents, servants and/or employees falsely arrested the plaintiff, **OLGA IRIS GARCIA**, compelled him to go with New York City Police Officers pursuant to the instruction and will of the above named defendants, detained and imprisoned plaintiff in a New York State correctional facility, and continued to detain and imprison the plaintiff, and at other diverse places and times, including, but not limited to, 40th Police Precinct, in the County of Bronx, City and State of New York and Central Booking located in the County of Bronx, City and State of New York.

25. That the said defendants, their agents, servants and/or employees, acting within the scope of their authority and within the scope of their employment, caused the plaintiff, **OLGA IRIS GARCIA**, herein to be arrested, detained and imprisoned, even though the defendants, their agents, servants and/or employees, had the opportunity to know, or should have known, that the matters

hereinbefore alleged, wrongfully, unlawfully and without a sufficient charge having been made against the plaintiff, directed that the plaintiff be, arrested, searched, detained and placed in confinement at said locations.

26. That as a result of the aforesaid accusations made by the said defendants, their agents, servants and employees, acting under the scope of their office and within the scope of their authority, made falsely, publicly, wickedly and maliciously, plaintiff, **OLGA IRIS GARCIA**, was held in custody by members of the New York City Police Department until the accusations were "non processed" by the Criminal Court system of the State of New York, County of Bronx.

27. That the defendants, their agents, servants and/or employees, as set forth on the aforementioned date, time and place, intended to cause the arrest, detention and imprisonment of the plaintiff herein; plaintiff was conscious of the said arrest, detention and imprisonment; plaintiff did not consent to said arrest, detention and imprisonment; and that the said arrest, detention and imprisonment was not otherwise privileged.

28. That the aforesaid occurrence, false arrest and imprisonment of the plaintiff, **OLGA IRIS GARCIA**, was caused wholly and solely by reason of the negligence of the defendants, their agents, servants and/or employees without any negligence on the part of the plaintiff herein.

29. That by reason of the aforesaid, the plaintiff, **OLGA IRIS GARCIA**, was injured in mind and body, still suffers, and will continue to suffer, great physical and mental pain and anguish; has

been subjected to great indignities, humiliation and ridicule; was greatly injured in his credit and circumstances; was prevented from performing and transacting his necessary affairs and business; and was incapacitated from his usual occupation.

30. That by reason of the aforesaid, the plaintiff, **OLGA IRIS GARCIA**, has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

AS AND FOR A SECOND COUNT:

MALICIOUS PROSECUTION

31. Plaintiff, **HERMINIO PIZARRO**, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "30", with the same force and effect as if more fully and at length set forth herein.

32. That on or about the 4th day of August, 2007, and prior and subsequent thereto, in the County of Bronx, City and State of New York, the defendants, acting within the scope and authority of their office and employment, carelessly, recklessly, maliciously and negligently caused, permitted, allowed, created and instigated the prosecution, and continuing prosecution, of the plaintiff with deliberate indifference.

33. That the plaintiff, **HERMINIO PIZARRO**, was wholly innocent, and was forced by the defendants, their agents, servants and/or employees, to submit to Court proceedings.

34. That on or about the 4th day of August, 2007, and prior and subsequent thereto, the defendants, their agents, servants and

employees falsely and maliciously, without probable cause or provocation charged the plaintiff, **HERMINIO PIZARRO**, with various crimes, including felonies, misdemeanors and violations.

35. That the said prosecution, criminal charges and hearings were instituted and procured by the defendants, their agents, servants and/or employees in this action unlawfully, maliciously and without reasonable or probable cause whatsoever. That the commencement and/or continuation of the criminal proceedings by the defendants, their agents, servants, and/or employees, against the plaintiff, was without probable cause, with actual malice and was terminated in the plaintiff's favor.

36. That the aforesaid occurrence, false arrest, imprisonment of the plaintiff, **HERMINIO PIZARRO**, and malicious prosecution, was caused solely and wholly by reason of the negligence of the defendants, their agents, servants and/or employees without any negligence on the part of the plaintiff herein.

37. That by reason of the aforesaid, the plaintiff was injured in mind and body, still suffers and, upon information and belief will continue to suffer, great physical and mental pain and anguish; has been subjected to great indignities, humiliation and ridicule; was greatly injured to his credit and circumstances; was prevented from performing and transacting his necessary affairs and business; and was incapacitated from his usual occupations. Upon information and belief, the plaintiff will continue to be so incapacitated in the future, and has expended diverse sums of monies, and incurred debt, in an effort to cure himself of said

injuries and to extricate himself from the imprisonment, indignities and humiliation foisted upon him by the actions of the defendants, their agents, servants and employees, including counsel fees and disbursements; and, upon information and belief, will expend further sums in that direction.

38. That by reason of the aforesaid, the plaintiff has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

AS AND FOR A THIRD COUNT:

NEGLIGENCE IN THE PERFORMANCE OF DUTIES

39. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs marked "1" through "38", with the same force and effect as if more fully set forth herein.

40. That the defendant, THE NEW YORK CITY POLICE DEPARTMENT, acting within the scope and authority of its office and employment, their agents, servants and/or employees recklessly, carelessly and negligently, performed their duties as police officers, in that they failed to use such care in the performance of their duties as reasonably prudent and careful police officers would have used under similar circumstances; in that they were reckless, careless and negligent in the manner in which they declared the plaintiffs in violation of the law; in that they caused, permitted and allowed the plaintiffs to be, pursued, apprehended, detained, prosecuted and imprisoned in violation of their civil rights; in that they used the threat of imprisonment, and actually caused the imprisonment of the plaintiff, **HERMINIO PIZARRO**,; in that they made

false accusations on or about August 4, 2007, in that the defendants, their agents, servants and/or employees failed to recognize that plaintiffs' rights had been unjustly violated, and in that the defendants, their agents, servants and/or employees were otherwise careless, reckless and negligent.

41. That the defendant, THE NEW YORK CITY POLICE DEPARTMENT, acting within the scope and authority of its office and employment, their agents, servants and/or employees recklessly, carelessly and negligently, performed their duties as police officers, in that they failed to use such care in the performance of their duties as reasonably prudent and careful police officers would have used under similar circumstances; in that they were reckless, careless and negligent in the manner in which they declared the plaintiffs in violation of the law; in that they caused, permitted and allowed the plaintiffs to be, pursued, apprehended, detained, prosecuted and imprisoned in violation of their civil rights; in that they used the threat of imprisonment, and actually caused the imprisonment of the plaintiff, **OLGA IRIS GARCIA**,; in that they made false accusations on or about August 4, 2007, in that the defendants, their agents, servants and/or employees failed to recognize that plaintiffs' rights had been unjustly violated, and in that the defendants, their agents, servants and/or employees were otherwise careless, reckless and negligent.

42. That the defendant, THE NEW YORK CITY POLICE DEPARTMENT, acting within the scope and authority of its office and employment, their agents, servants and/or employees recklessly, carelessly and

negligently, performed their duties as police officers, in that they failed to use such care in the performance of their duties as reasonably prudent and careful police officers would have used under similar circumstances; in that they were reckless, careless and negligent in the manner in which they declared the plaintiffs in violation of the law; in that they caused, permitted and allowed the plaintiffs to be, pursued, apprehended, detained, prosecuted and imprisoned in violation of their civil rights; in that they used the threat of imprisonment, and actually caused the imprisonment of the plaintiff, **OLGA IRIS GARCIA**; in that they made false accusations on or about August 4, 2007, in that the defendants, their agents, servants and/or employees failed to recognize that plaintiffs' rights had been unjustly violated, and in that the defendants, their agents, servants and/or employees were otherwise careless, reckless and negligent.

43. That the aforesaid occurrence, false arrest and imprisonment of the plaintiff, **OLGA IRIS GARCIA**, malicious prosecution, and negligent performance of duties, was caused solely and wholly by reason of the negligence of the defendants, their agents, servants and/or employees without any negligence on the part of the plaintiff, **OLGA IRIS GARCIA**, herein.

44. That by reason of the aforesaid, the plaintiffs were injured in mind and body, still suffer, and upon information and belief will continue to suffer, great physical and mental pain and anguish; have been subjected to great indignities, humiliation and ridicule; were greatly injured in their credit and circumstances;

were prevented from performing and transacting their necessary affairs and business; and were incapacitated from their usual occupation. Upon information and belief, the plaintiffs will continue to be so incapacitated in the future, and plaintiffs have expended diverse sums of monies, and incurred debt, in an effort to cure themselves of said injuries and to extricate themselves from the imprisonment, indignities and humiliation foisted upon them by the actions of the defendants, their agents, servants and employees, including counsel fees and disbursements and, upon information and belief, will expend further sums in that direction.

45. That by reason of the aforesaid, the plaintiffs have been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

AS AND FOR A FOURTH COUNT:

NEGLIGENT HIRING AND RETENTION:

46. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs "1" through "45" inclusive with the same force and effect as if more fully and at length set forth herein.

46. That the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, were careless, reckless and negligent in hiring and retaining its employees, in that the said defendants' employees lacked the experience, deportment and ability to be employed by the defendant; in that the defendants failed to exercise due care and caution in their hiring practices, and in particular, hiring the police officers involved who lacked the

mental capacity and the ability to function as employees of the aforementioned defendants; in that the defendants lacked the maturity, sensibility and intelligence to be employed by the defendants; in that the defendants knew of the lack of ability, experience, deportment and maturity of said defendants' employees when they hired them to be employees; and in that the defendants, their agents, servants and employees were otherwise careless, reckless and negligent.

47. That the defendants, THE CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, were careless, reckless and negligent in hiring and retaining its employees, specifically: Police Officer JOSE M. REYNA, SHIELD NO: 12126 and Police Officer EFRAIN MORALES, SHIELD NO: 13473, in that the said defendants' employees lacked the experience, deportment and ability to be employed by the defendant, NEW YORK CITY POLICE DEPARTMENT; in that the defendants failed to exercise due care and caution in their hiring practices, and in particular, hiring the police officers involved who lacked the mental capacity and the ability to function as employees of the aforementioned defendants; in that the defendants lacked the maturity, sensibility and intelligence to be employed by the defendants; in that the defendants knew of the lack of ability, experience, deportment and maturity of said defendants' employees when they hired them to be employees; and in that the defendants, their agents, servants and employees were otherwise careless, reckless and negligent.

48. That the aforesaid occurrence, the false arrest and

imprisonment, malicious prosecution, negligence in performance of duties and negligence in hiring and retention and the resulting injuries to mind and body therefrom, were caused wholly and solely by reason of the negligence of the defendants, their agents, servants and employees without any negligence on the part of the plaintiffs.

49. That by reason of the aforesaid, the plaintiffs were injured in mind and body and still suffer, and upon information and belief will continue to suffer, great physical and mental pain; were incapacitated from their usual occupation and will, upon information and belief, be so incapacitated in the future; have expended and incurred diverse sums of money in an effort to cure themselves of said injuries to extricate themselves from the indignities and humiliation imposed upon them by the actions of the defendants, their agents, servants and employees, including counsel fees and disbursements, and, upon information and belief, will expend further sums in that direction.

50. That by reason of the aforesaid, the plaintiffs have been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

AS AND FOR A FIFTH COUNT:

NEGLIGENT SUPERVISION

51. Plaintiffs repeat, reiterate and reallege each and every allegation contained in paragraphs marked "1" through "50", with the same force and effect as if more fully and at length set forth herein.

52. That the defendants THE CITY NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, acting within their scope and authority of their office and employment, in their capacity as a law enforcement officer, was negligent and careless in the supervision, maintenance and control of police officers under their supervision and more particularly the supervision of the members of THE POLICE DEPARTMENT OF THE CITY OF NEW YORK, in that the defendants failed to exercise due care and caution in their supervision of same and in particular causing, permitting and allowing police officers under their supervision, and more particularly the defendants' agents, servants, employees and/or licensees, to act in a careless, reckless and negligent manner without administering proper control, discipline and supervision thereby allowing police officers under their supervision, and more particularly police officers involved herein, to act in an unlawful and illegal manner; in causing, permitting and allowing persons within the employ of the CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, search plaintiff, **HERMINIO PIZARRO**, in that the defendants knew, or should have known, of the lack of ability, experience, deportment and maturity of the said defendant police officers under their care, supervision and control and more particularly those police officers with a propensity to act in an unlawful and illegal manner; and that said agents, servants and employees failed to properly investigate action taken by police officers under their care, supervision and control, and were otherwise careless and negligent.

53. That the defendants THE CITY NEW YORK and THE NEW YORK

CITY POLICE DEPARTMENT, acting within their scope and authority of their office and employment, in their capacity as a law enforcement officer, was negligent and careless in the supervision, maintenance and control of police officers under their supervision and more particularly the supervision of the members of THE POLICE DEPARTMENT OF THE CITY OF NEW YORK, in that the defendants failed to exercise due care and caution in their supervision of same and in particular causing, permitting and allowing police officers under their supervision, and more particularly the defendants' agents, servants, employees and/or licensees, to act in a careless, reckless and negligent manner without administering proper control, discipline and supervision thereby allowing police officers under their supervision, and more particularly police officers involved herein, to act in an unlawful and illegal manner; in causing, permitting and allowing persons within the employ of the CITY OF NEW YORK and THE NEW YORK CITY POLICE DEPARTMENT, search plaintiff, **OLGA IRIS GARCIA**, in that the defendants knew, or should have known, of the lack of ability, experience, deportment and maturity of the said defendant police officers under their care, supervision and control and more particularly those police officers with a propensity to act in an unlawful and illegal manner; and that said agents, servants and employees failed to properly investigate action taken by police officers under their care, supervision and control, and were otherwise careless and negligent.

54. That the aforesaid occurrence, false arrest and imprisonment of the plaintiff, **OLGA IRIS GARCIA**, malicious

prosecution, negligent performance of duties, negligent hiring and retention and negligent supervision and training, was caused solely wholly and solely by reason of the negligence of the defendants, their agents, servants and/or employees without any negligence on the part of the plaintiff herein.

55. That by reason of the aforesaid, the plaintiff, **OLGA IRIS GARCIA**, was injured in mind and body, still suffers and, upon information and belief will continue to suffer, great physical and mental pain and anguish; has been subjected to great indignities, humiliation and ridicule; were greatly injured in their credit and circumstances; was prevented from performing and transacting his necessary affairs and business; and was incapacitated from his usual occupation. Upon information and belief, the plaintiff will continue to be so incapacitated in the future, and plaintiff has expended diverse sums of monies, and incurred debt, in an effort to cure himself of said injuries and to extricate himself from the imprisonment, indignities and humiliation foisted upon them by the actions of the defendants, their agents, servants and employees, including counsel fees and disbursements; and, upon information and belief, will expend further sums in that direction.

56. That by reason of the aforesaid, the plaintiff, **HERMINIO PIZARRO**, has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

57. That by reason of the aforesaid, the plaintiff, **OLGA IRIS GARCIA**, has been damaged in an amount which exceeds the

jurisdictional limits of all lower courts which otherwise would have jurisdiction.

AS AND FOR A SIXTH COUNT OF BRUTALITY AND NEGLIGENCE:

58. Plaintiff, **HERMINIO PIZARRO**, repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "57", with the same force and effect as if more fully and at length set forth herein.

59. That on or about the 4th day of August, 2007, in the County of Bronx, City and State of New York, at which time and place defendants their agents, servants and/or employees and/or licensees, were acting within the scope of their employment, authority and office as part of their regular and official employment as employees for The City of New York and the New York City Police Department.

60. That the occurrence complained of and the results thereof, were caused wholly and solely by the negligence, carelessness and recklessness of the Defendants, THE CITY OF NEW YORK, POLICE DEPARTMENT OF THE CITY OF NEW YORK, P.O. JOSE M. REYNA, SHIELD NO: 12126, P.O. EFRAIN MORALES, SHIELD NO: 13714 and/or said defendants' agents, servants, employees, licensees, designees and/or representatives in the ownership, operation, management, supervision, charge and control of the aforesaid location and personnel employed thereat; in acting in a brutal, coercive, over-zealous, unprofessional and imprudent manner; in utilizing and exhibiting excessive force under the circumstances then and there existing; in exposing individuals and more

particularly plaintiff, **HERMINIO PIZARRO**, to an undue risk of harm and danger; in causing, allowing and permitting said plaintiff to sustain such injuries, indignities and excessive bodily harm; in failing to remain within the boundary of care and caution due and owed the general public and more particularly the plaintiff herein; in threatening, intimidating and causing undue anguish and stress; in failing to provide a safe environment; in failing to act in a prudent, rational and skillful manner, and in demonstrating total willful disregard as to the safety and well-being of others.

61. That by reason of the aforesaid, the plaintiff, **HERMINIO PIZARRO**, has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

62. Plaintiff, **OLGA IRIS GARCIA**. repeats, reiterates and realleges each and every allegation contained in paragraphs marked "1" through "61", with the same force and effect as if more fully and at length set forth herein.

63. That on or about the 4th day of August, 2007, in the County of Bronx, City and State of New York, at which time and place defendants their agents, servants and/or employees and/or licensees, were acting within the scope of their employment, authority and office as part of their regular and official employment as employees for The City of New York and the New York City Police Department.

64. That the occurrence complained of and the results thereof, were caused wholly and solely by the negligence,

carelessness and recklessness of the Defendants, THE CITY OF NEW YORK, POLICE DEPARTMENT OF THE CITY OF NEW YORK, P.O. JOSE M. REYNA, SHIELD NO: 12126, P.O. EFRAIN MORALES, SHIELD NO: 13714 and/or said defendants' agents, servants, employees, licensees, designees and/or representatives in the ownership, operation, management, supervision, charge and control of the aforesaid location and personnel employed thereat; in acting in a brutal, coercive, over-zealous, unprofessional and imprudent manner; in utilizing and exhibiting excessive force under the circumstances then and there existing; in exposing individuals and more particularly plaintiff, **OLGA IRIS GARCIA**, to an undue risk of harm and danger; in causing, allowing and permitting said plaintiff to sustain such injuries, indignities and excessive bodily harm; in failing to remain within the boundary of care and caution due and owed the general public and more particularly the plaintiff herein; in threatening, intimidating and causing undue anguish and stress; in failing to provide a safe environment; in failing to act in a prudent, rational and skillful manner, and in demonstrating total willful disregard as to the safety and well-being of others.

65. That by reason of the aforesaid, the plaintiff, **OLGA IRIS GARCIA**, has been damaged in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

AS AND FOR A SEVENTH COUNT:

VIOLATION OF CIVIL RIGHTS

66. As plaintiffs were lawfully and properly enjoying their

rights as citizens of the United States of America, said defendants' employees of the New York City Police Department, their agents, servants and/or employees, who having the real and apparent ability to cause imminent harmful and offensive injury, and the power and authority to warrant for the arrest, detention, prosecution and imprisonment of the plaintiffs, did so threaten these acts upon the plaintiffs, and did so cause the plaintiffs herein to be arrested, detained, prosecuted and imprisoned, and searched and in violation of plaintiffs' civil rights; in failing to recognize, detect and investigate same; in revoking the rights of the plaintiffs herein; in failing to train, monitor, control and/or supervise their agents, servants and/or employees; and in prosecuting and continuing to prosecute the plaintiffs.

67. The defendants, their agents, servants and employees failed to properly and adequately ascertain that plaintiffs were not in violation of the law and that plaintiffs were detained, prosecuted and imprisoned for an extended period of time, depriving him of his rights and liberties as set forth in the Constitutions of the United States of America and of the State of New York, handcuffed them and threatened plaintiffs with the possible use of firearms and weapons and the use of physical force; in that they continued to detain, prosecute and to imprison the plaintiff without any conduct on the part of the plaintiff to so warrant, to wit:

- a) in that all of the actions of the defendants, their agents, servants and/or employees, acting within the scope and authority of their employment and office, committed with the intention to cause economic and mental

injury to the plaintiffs, arrested, detained, prosecuted and imprisoned the plaintiffs without their consent; plaintiffs were at all times conscious of their arrest, detainment, prosecution and imprisonment did not consent to the arrest, detainment, prosecution and imprisonment; and the arrest, detainment, prosecution and imprisonment were not otherwise privileged; and,

b) the arrest, detention, prosecution and imprisonment were not justified by probable cause or other legal privilege; defendants, their agents, servants and employees, acting under the color of statute, ordinances, regulations, customs and usages of the United States of America, the State of New York, City of New York and County of Bronx, within the scope of their employment and under the authority of their office as employees of The New York City Police Department for said state.

c) that the defendants, their agents, servants and/or employees, acting within the scope and authority of their office and employment, caused an unlawful arrest, detention, prosecution and imprisonment of the plaintiffs thus depriving them of their freedom and civil rights as guaranteed by the Constitution of the United States of America when they in a willful, wanton, reckless, careless and negligent manner deprived the plaintiffs of their due process, liberty and freedom without their consent and with the intention of causing harm and deprivation of their freedom and civil liberties, all without warrant, probable cause or any lawful cause whatever; and,

d) that the defendants, their agents, servants and employees failed to adequately and properly train, supervise, monitor, discipline or in any other way control the behavior and performance of police officers, their agents, servants and/or employees; that in their practices in the exercise as a police officer, their exercise of supervisory functions and their failure to enforce the laws of the United States of America, the State and City of New York is evidence of the careless and negligent lack of cautious regard for the rights of the public including the plaintiffs herein; in that they exhibited a lack of that degree of due care which prudent and reasonable individuals, and reasonable police officers would show in the execution of, and functions police officers; and,

e) the failure of the defendants, their agents, servants and employees to hire, train, supervise, discipline or in any other way control the defendants, in the exercise of their functions; in that their failure to enforce the laws of the United States of America, the State of New York and the City of New York were carried out carelessly and negligently and without regard for the consequences, so as to display a

careless and negligent disregard for the dangers of harm and injury to the citizens of the United States of America, and the State and City of New York including, plaintiffs; and,

f) due to the acts of the defendants, their agents, servants and employees, and the failure of the defendants, to control, discipline, train, monitor, supervise and/or properly hire personnel under their care, supervision and control, and the continued employment of same presents a clear and present danger to the citizens of the United States of America and the City and State of New York; and,

g) that the said arrest, detention, prosecution and imprisonment were instituted and procured by the defendants, their agents, servants and employees, under the scope and authority of their office and employment in this action, unlawfully, carelessly and negligently and without any reasonable or probable cause whatsoever therefor. That the commencement and/or continuation of the, revocation of freedom; hearings and criminal proceedings by the said defendants against the plaintiff was without probable cause with actual malice and was ultimately terminated in favor of the plaintiffs; and,

h) that the defendants, their agents, servants and/or employees, acting within the scope and authority of their office and employment, permitted the use of policy and/or drafted policy that was violative of the Constitutional rights of the above named plaintiffs; and, in that each and all of the acts of the defendants, their agents, servants and employees alleged herein were done not as individuals but under the color and pretense of the statutes, ordinances, regulations, customs and usages of the State of New York, the City of New York and the County of Bronx, and under the authority of their office as police officers for said State, City and County.

68. Defendants did not have probable cause to arrest, detain, prosecute and imprison the plaintiff before, after or at the time of this incident and deprive plaintiff of his Constitutional rights as set forth in the Constitution of the United States, particularly 42 U.S.C. Sec. 1983 and the Constitution of the United States of America.

69. Defendants, did not have probable cause to arrest, detain,

prosecute and imprison plaintiffs before, after or at the time of this incident, and failed to properly safeguard the plaintiffs' Constitutional rights as set forth in the Constitution of the United States, particularly 42 U.S.C. Sec. 1983, and the Constitution of the State of New York.

70. As a direct result of the aforesaid actions and conduct on the part of the said defendants, their agents, servants and/or employees, plaintiffs were falsely arrested, detained, prosecuted and imprisoned and were compelled to be arraigned and appear in Criminal Court system of the City and State of New York, County of Bronx and to undergo a criminal proceedings.

71. That at all times hereinafter mentioned, the defendants were employed in their respective capacities by the New York City Police Department and were acting within the scope and authority of their office and employment under the color of their official capacity and their acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the New York City Police Department.

72. That at all times hereinafter mentioned, defendants, their agents servants and/or employees, were acting pursuant to orders and directives from defendants, and acting within the scope and authority of his employment and office.

73. That at all times hereinafter mentioned, defendants, their agents servants and/or employees, were acting pursuant to orders and directives from defendants, within the scope and authority of their employment and office.

74. That at all times hereinafter mentioned, defendants, their agents, servants and/or employees, were acting pursuant to, and within the scope and authority of their employment and office.

75. That during all times hereinafter mentioned, the defendants, their agents, servants and/or employees, and each of them separately, and in concert, acted under color and pretense of law, to wit: under color of the statutes, ordinances, regulations, customs and usages of The New York City Police Department and the defendants herein, separately and in concert, engaged in the reckless, careless and negligent conduct herein mentioned to the injury and detriment of the plaintiffs and deprived plaintiffs of the rights, privileges and immunities secured to plaintiffs by the First and Fourteenth Amendments to the Constitution of the United States, the laws of the United States, the Constitution of the State of New York and the laws of the City and State of New York.

76. The defendants, their agents, servants and/or employees, were employed by the POLICE DEPARTMENT OF THE CITY OF NEW YORK, acting under color of law, have subjected plaintiffs and other persons to a pattern of conduct consisting of false arrest, detention, prosecution and imprisonment and that said defendants, their agents, servants and/or employees did not confer due process upon the plaintiff herein, and in denied the rights, privileges and immunities guaranteed plaintiff and other citizens of the United States of America by the Constitution of the United States of America.

77. This systematic pattern of conduct consists of a large

number of individual acts of violations of plaintiff's civil rights, and other citizens, by employees of the of the New York City Police Department and more particularly the defendant employees, their agents, servants and/or employees, acting in concert with persons unknown to the plaintiff and under color of law, and said acts, while carried out under color of law, within the scope and authority of their office and employment, having no justification or excuse in law and are instead reckless, careless and negligent, unrelated to any activity in which police officers may properly, appropriately and legally engage in the course of protecting persons or property or ensuring civil order.

78. Although defendants knew or should have known of the fact that this pattern of conduct was carried out by their agents, servants and/or employees, defendants have not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff or other citizens injured thereby, or to take any disciplinary action whatever against any of their employees or agents,

79. The conduct of the defendants, their agents, servants and/or employees, deprived plaintiff of the following rights, privileges and immunities secured to them by the Constitution of the United States and of the State of New York:

- a) The right of plaintiff to be informed of the nature and cause of the accusation against them as secured to them under the Sixth and Fourteenth Amendments to the Constitution of the United States; and,
- b) The right of plaintiff not to be deprived of life, liberty or property without due process of law, and the right to the equal protection of the laws secured by the Fourteenth

Amendment to the Constitution of the United States.

63. That by reason of the aforesaid negligence, false arrest and false imprisonment, malicious prosecution, negligent performance of duties, negligent hiring and retention, negligent training and supervision, and violation of civil rights caused by the defendants, their agents, servants and employees, acting within the scope and authority of their office and employment, who conspired together to enter into a nefarious scheme to wrongfully deprive the plaintiff, and compel them to abandon their rights and privileges as provided to them in the Constitution of the United States of America, and provided to them in the Constitution of the State of New York, and laws thereto, the defendants, their agents, servants and employees violated 42 U.S.C. Sec. 1983 in that the defendants, their agents, servants and employees acted as persons who under color of any statute, ordinances, regulation, custom or usage of the City of New York and the State of New York, subjected or caused to be subjected, citizens of the United States of America, or other persons within the jurisdiction, particularly the plaintiff thereof to be deprived of his rights, privileges and immunities received by the Constitution and laws of the United States of America and of the State of New York; was subjected to great indignities and humiliation, and pain and distress of mind and body and was held up to scorn and ridicule, injured in his character and reputation, was prevented from attending his usual business and vocation and was injured in his reputation in the community and the acts aforementioned were committed with the aim

of injuring and damaging plaintiff.

80. That the aforesaid occurrence, false arrest and imprisonment of the plaintiff, malicious prosecution, negligent performance of duties, negligent hiring and retention, negligent supervision and training and violation of civil rights, was caused solely and wholly by reason of the negligence of the defendants, their agents, servants and/or employees without any negligence on the part of the plaintiff herein.

81. That by reason of the aforesaid, the plaintiff was injured in mind and body, still suffers, and upon information and belief, will continue to suffer great physical and mental pain and anguish; have been subjected to great indignities, humiliation and ridicule; was greatly injured in his credit and circumstances; was prevented from performing and transacting his necessary affairs and business; and he was incapacitated from his usual occupation. Upon information and belief, plaintiff will continue to be so incapacitated in the future; plaintiff has expended diverse sums of monies, and incurred debt, in an effort to cure himself of said injuries and to extricate himself from the imprisonment, indignities and humiliation foisted upon him by the actions of the defendants, their agents, servants and employees, including counsel fees and disbursements and, upon information and belief, will expend further sums in that direction.

82. That by reason of the aforesaid, the plaintiff requests the following relief:

a) Punitive damages in an amount which exceeds the

jurisdictional limits of all lower courts which otherwise would have jurisdiction.

b) Compensatory damages in the amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction.

WHEREFORE, plaintiff, **HERMINIO PIZARRO**, demands judgment against the defendants in an amount which exceeds the jurisdictional limits of all lower courts which otherwise would have jurisdiction on all Counts of this action, and on the Count for punitive damages, and reasonable attorney's fees, together with costs and disbursements of this action and such other and further relief that this Court may deem just, equitable and proper under the circumstances and plaintiff, **OLGA IRIS GARCIA**, demands judgment against the defendants in an amount which exceeds the jurisdictional limits of all lower court which otherwise would have jurisdiction on the Counts relating to False Arrest; and on the Count for punitive damages, and reasonable attorney's fees, together with costs and disbursements of this action and such other and further relief that this Court may deem just, proper and equitable under the circumstances.


GETZ & BRAVERMAN, P.C.

BY: **MICHAEL I. BRAVERMAN**
Attorneys for Plaintiff
172 East 161st Street
Bronx, New York 10451
(718) 993-3000

PLAINTIFF'S VERIFICATION


STATE OF NEW YORK)

SS.:

COUNTY OF BRONX)

HERMINIO PIZARRQ being duly sworn, deposes and says:

I am the PLAINTIFF in the within action. I have read the foregoing **SUMMONS AND COMPLAINT** and know the contents thereof and the same is true to my own knowledge, except as to those matters started on information and belief and as to those matters I believe them to be true.


HERMINIO PIZARRQ

Sworn to before me this

day of **MAY 10** 2008.


NOTARY PUBLIC

Index Number:
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

HERMINIO PIZARRO and OLGA IRIS GARCIA,

Plaintiff(s),

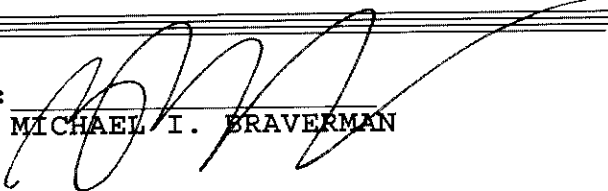
-against-

THE CITY OF NEW YORK, POLICE DEPARTMENT
OF THE CITY OF NEW YORK, P.O. JOSE M.
REYNA, SHIELD NO: 12126. P.O. EFRAIN
MORALES, SHIELD NO: 13473, and "JOHN DOE",
name fictitious and intended to be a
Police Officer whose name is presently
unknown,

Defendant(s)

SUMMONS AND VERIFIED COMPLAINT

BY:


MICHAEL I. BRAVERMAN

GETZ & BRAVERMAN, P.C.
Attorney for Plaintiff(s)
172 East 161st Street
Bronx, New York 10451
718-993-3000

To:

Service of a copy of the within
hereby admitted.

is

Dated, _____

Attorney(s) for defendant(s)
